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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,708	12/21/2001	Juanita Mercure	41836.00055USC1	5989

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EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/036,708

Examiner

Ula C Ruddock

Applicant(s)

MERCURE ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 10 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-4,6-18,20-24 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-4,6-18,20-24 and 27-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

1. The Examiner has carefully considered Applicant's amendment and accompanying remarks filed February 10, 2003. The claim objections have been overcome by the present response.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 6-18, 20-24, and 27-29 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wynne (US 5,328,743). Wynne (US 5,328,743) teaches a reinforced shrink wrap that is multilayered with reinforcing grids in adhesive layers on either side of a shrink film with outer layers of olefin film (abstract). The shrink film layer is highly irradiated polyethylene and the preferred thickness is from 0.75 mil to 1.5 mils (col 2, ln 22-25). The outer layers of the shrink wrap is a polyolefin film from 1 to 6 mil thick and may have two plies or more (col 2, ln 48-49 and 54). The polyolefin layers can include additives such as color additives, antioxidants, ultraviolet light stabilizers, and corrosion inhibitors (col 3, ln 15-22). In addition, additives used in polyolefin film may be included as desired in the polyolefin inner or outer layers or in one of more plies of a multiply film. Additives include ultraviolet light stabilizers and flame retardants (col 1, ln 52-58). The reinforcing grid is preferably 200 to 800

denier yarn in a crisscross pattern which the Examiner equates to be the non-woven scrim of Applicant's invention. The grid is filamentous made of single strand or multiple filament yarn preferably nylon, polyester or blends (col 2, ln 28-31). The reinforcing grid is in a layer of adhesive, which the Examiner equates to be the tie layer of Applicant's invention, that has a dry thickness of between 0.25 and 1 mil. The adhesive should be used in an effective amount to prevent delamination (col 2, ln 31-36). There can be more than one adhesive layer (col 4, ln 12-14). Inherently, the adhesive of Wynne et al. will have a lower modulus than the outer polyolefin layers since the adhesive is not used in an amount that retards the movement of the grid and because the grid sags to prevent tearing.

Applicant has amended the claims to read on an "extrusion laminated" shrink wrap. Wynne et al. fail to disclose that the shrink wrap is extrusion-laminated. Wynne does disclose that the outer layers are co-extruded (col 5, ln 10-12 and ln 21-23). It should be noted that the method of forming an article is not germane to the issue of patentability of the article itself. Furthermore, it is not seen how extrusion laminating the shrink wrap significantly affects the chemistry or structure of the shrink wrap itself. It is the examiner's position that the shrink wrap of Wynne et al. is identical to or only slightly different than the claimed shrink wrap prepared by the method of the claims, because both shrink wrap comprise a first layer of thermoplastic material, a second layer of thermoplastic material, a reinforcing grid disposed between the first and second layers of thermoplastic and an adhesive of elastomeric material. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in

the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). The Wynne et al. either anticipated or strongly suggested the claimed subject matter. In the event any difference can be shown for the shrink wrap of the product-by process claims 1-4, 6-18, 20-24, and 27-29, as opposed to the product taught by the Wynne et al. reference, such differences would have been obvious to one of ordinary skill in the art as a routine modification of the product in the absence of a showing of unexpected results; see also *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985). Rejection is maintained.

Response to Arguments

5. Applicant's arguments filed February 10, 2003, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that the shrink wrap of Wynne is not extrusion laminated as now required by the newly amended claims. While this may be true, it is the Examiner's position that the method of forming an article is not germane to the issue of patentability of the article itself. Furthermore, it is not seen how extrusion laminating the shrink wrap significantly affects the chemistry or structure of the shrink wrap itself. Applicant also argues that the reinforcing grid of Wynne is in a layer of water-based or solvent-based adhesive or other pressure sensitive adhesive that could not be extruded to from a tie layer. This argument is not persuasive because the adhesive of Wynne, which the Examiner is equating to the tie layer, can be an acrylic based adhesive (col 4, ln 9-12) and according to Applicant's specification on page 8, the

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tie layer can be methyl acrylate. Therefore, the tie layer in the present invention and the adhesive of Wynne would have the same properties when extruded.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Paleari et al. (US 5,843,581) is pertinent because it discloses a multilayer film that is heat shrinkable (col 4, ln 31-34) wherein the films are extruded (col 6, ln 51-61).

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 703-305-0066. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

UCR *VCR*
April 21, 2003

Wla Ruddock